arrange their affairs. Such behavior does substantial damage to the rule of law.

What such behavior also demonstrates is a refusal to enforce the laws enacted by Congress. It shows that chapter 154 will remain a dead letter so long as the obligation to enforce it remains in the hands of courts such as the Ninth Circuit. It is clear that, if any two of the 11 judges who joined the Spears rehearing dissent are assigned to a future Arizona 154 case, they will not feel obligated to follow Spears and the State will be relitigating the issue of its 154 status from scratch. Indeed, portions of the Spears dissent argue that Arizona's ''statutory scheme did not comply with Chapter 154's requirements.'' *Spears*, 283 F.3d at 1002 (Reinhardt, J., dissenting from denial of rehearing). The tone of the 11-judge dissent also betrays an open hostility to the chapter 154 system.

The trouble with chapter 154 is that the courts assigned to decide when it applies are the same courts that would be bound by the chapter's strict deadlines if a State is found to qualify. Simply put, the regional courts of appeals have a conflict of interest. They decide whether the States are entitled to a benefit which places a burden on the courts themselves. Some prosecutors also believe that refusal to enforce chapter 154 also reflects a hostility to the death penalty—that some judges are ignoring the law because they do not want to see death sentences carried out. If this is true, it is absolutely unacceptable. A judge has an obligation to uphold and enforce a valid law, whether or not he agrees with it.

My amendment makes several changes to chapter 154 to ensure that it provides real and meaningful benefits to States that provide quality post-conviction counsel. First and most importantly, it assigns the 154 certification decision to the U.S. Attorney General and the DC Circuit, rather than the local courts of appeals that have an interest in the case. The Attorney General receives no benefits from chapter 154, and he has expertise in evaluating State criminal justice systems. Just last year, for example, Congress assigned the Attorney General to evaluate State DNA testing and capital counsel systems in the Justice for All Act. Review of the Attorney General's decision in the DC Circuit also is appropriate. Because there is no Federal habeas review of criminal convictions in the District of Columbia, the DC Circuit also has no stake in whether or not a State qualifies for chapter 154.

My amendment, like subsection (d) of section 507, also makes clear that a determination that a State has satisfied the chapter 154 standard as of a particular date will apply retroactively to all pending habeas cases for which the prisoner received State habeas after the certified date. This will ensure that a State will receive all of the procedural and litigation benefits that it should have received had the Federal habeas claim been governed by chapter 154 from the day that it was filed, as it should have been. The proposed paragraph 28 U.S.C. 2265(a)(2) in my amendment makes clear that, once the Attorney General determines that a State established a post-conviction capital-counsel system by a particular date, the chapter 154 eligibility certification shall be effective as of that date. Thus, if a capital prisoner received State habeas counsel after that effective date, the case is governed by chapter 154 in Federal proceedings.

However, some courts might construe 2265(a)(2) to mean that while the chapter 154 system thereafter governs Federal habeas applications that have already been filed, the actual procedural benefits of that chapter—especially the claims limitations and amendment limits would only apply on a going-forward basis—i.e., only to claims or amendments filed after the date of enactment of this law. Thus when I added a few other provisions to the amendment, I also inserted subsection (g), which is the same as subsection (d) of section 507. This subsection, by explicitly applying section 507 and the changes that it makes to all qualified pending Federal habeas cases, should make clear that when Congress says that it wants the new law to apply retroactively, it means that the law will apply retroactively—that it will govern new claims as if it had been in effect as of the effective date of the chapter 154 certification.

Any non-retroactive application of chapter 154 would be fundamentally unfair to States such as Arizona, which has been providing post-conviction counsel to State prisoners for nearly a decade but has been inappropriately denied the benefits of chapter 154 for some cases that already have progressed to Federal habeas. In the Spears case, for example, the Ninth Circuit even found that Arizona's counsel system met chapter 154 standards, but the court nevertheless came up with an excuse for refusing to apply chapter 154 to that case. If the Attorney General and the DC Circuit conclude that Arizona met chapter 154 standards prior to Spears's receipt of counsel, as I am confident that they will, Arizona should receive all of the benefits of chapter 154 for that case and subsequent cases, as if chapter 154 had governed the Federal petition as of the day it had been filed (as it should have). Chapter 154, for example, does not allow cases to be remanded to State court to exhaust new claims (a considerable source of delay on Federal habeas), and it places very sharp limits on amendment to petitions. Arizona should not be forced to litigate claims in Spears's petition that were defaulted, that were unexhausted and sent back to State court, or that otherwise were not addressed by State courts when Spears first filed the petition (unless those claims meet the narrow exceptions in subsection 2264(a)). Nor should the State be forced to litigate claims that were added to the petition in amendments that do not satisfy chapter 154's limits on amendments.

Applying chapter 154 retroactively may seem harsh, but it is important to recall that any prisoner whose Federal petition will be governed by 154 necessarily received counsel in State post-conviction proceedings. Unlike the typical uncounseled State habeas petitioner, who may not have been aware of State procedural rules or of all the potential legal claims available to him, a chapter 154 habeas petitioner will have no excuse for not making sure that all of his claims were addressed on the merits in State court. (Or rather, any excuse will be limited to those authorized in 28 U.S.C. 2264(a).) I believe that, given the resources Arizona has devoted to providing post-conviction counsel, the State should easily qualify for chapter 154. The Ninth Circuit has treated Arizona unfairly by denying it chapter 154 status. If the U.S. Attorney General and DC Circuit agree that Arizona should have been 154-certified when Spears filed his Federal petition, Arizona should be placed in the same position that it would be in today had the Spears case proceeded under chapter 154 from the beginning.

My amendment also extends the time for a district court to rule on a 154 petition from 6 months to 15 months. I have been informed that the bill that became the 1996 Act originally adopted 6 months as the limit as an initial bargaining position. The intention had been to eventually extend this to 12 months, but because of the politics of the enactment of AEDPA, it was not possible to change this deadline later in the legislative process. My amendment is even more generous than the original authors' intention, giving the district courts 15 months, in recognition of their burdensome caseloads and the fact that they do the real work in Federal habeas cases—they are the courts that hold hearings, if necessary, to identify the truth of a case. This same change was included in subsection (e) of section 507.

Subsection (f) of section 507 is the same as a provision in subsection (e) of my amendment. This subsection codifies the rule of *McFarland* v. *Scott*, 512 U.S. 849 (1994), which allows a stay to issue on the basis of an application for appointment of Federal habeas counsel (without the actual filing of a petition), but it limits such stays to a reasonable period after counsel is actually appointed or the application for appointment of counsel is withdrawn or denied.

PERSONAL EXPLANATION

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, December 30, 2005

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall votes Nos. 664 and 671. Had I been present, I would have voted ''aye.'' Mr. Speaker, I ask unanimous consent that my statement appear in the permanent RECORD immediately following these votes.

H.R. 2520, on Passage, rollcall No. 664, ''aye.''

H. Con. Res. 275, rollcall No. 671, ''aye.''

CONFERENCE REPORT ON H.R. 2863, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

SPEECH OF

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 18, 2005

Mr. CROWLEY. Mr. Speaker, shame! That is all I can say—both on the way the Republican leadership has governed this country this year—and on how they are using the troops as a political tool to provide huge taxpayer benefits to the oil and gas industry.

Over 2,100 Americans killed in Iraq, and the Republican leadership waits until the last night of Congress—3 months after we needed to fund the military—to pass the spending bill for our troops.

This is called a ''must pass'' bill, as it is one Congress MUST pass as if we don't, the military will literally run out of money and not be

able to pay our troops, buy supplies and give them shelter.

Specifically, the facts show that without passing this bill, our military is slated to run out of money for Iraq operations in January.

What does this mean? It means the curtailment of training and equipment maintenance activities in the United States to better prepare our troops.

It means that contracts will be severely delayed or canceled to provide body armor, armored vehicles, jammers, and radios needed in the field to keep these guys not only protecting our security but protecting their own lives.

But the politicians in Washington, many of whom have never worn the uniform and have done a heck of a job to avoid service, now stand proud and mighty saying they are working for these troops safety.

And they will again use our troops as a prop to make their so-called case.

But the facts are the troops are the last things on the mind of the White House and this shameful Republican Congress.

This Republican Congress and this Bush White House has continually underfunded our troops and used them as a political prop.

Remember ''Mission Accomplished'' anyone?!?

If Congress cared about our military so, outside of props and campaign commercials, why is this bill 3 months behind schedule?

Why is this bill being used to provide a multi-billion gift to the nation's biggest gas companies, by allowing them to drill in Alaska?

The Republican Leadership attached the can't pass ANWR provision to this must pass bill in the ultimate example of politics gone wrong.

By not giving us the ability to vote on ANWR alone, this does not mean that we approve of this misguided policy.

I thought they were making enough profits off Americans at the pump now—but Congress and the White House think they can make more money for the ExxonMobils of the world—this time off the backs and lives of our troops fighting overseas in Iraq and Afghanistan.

This is the most shameful act I have seen in the most corrupt Congress in American history.

This year America has seen the Republican Majority Leader of the House of Representatives TOM DELAY be indicted on money laundering charges.

America has seen the Republican Majority Leader of the Senate BILL FRIST under investigation for criminal charges—charges like those that sent Martha Stewart to jail.

America has seen a senior Republican Congressman from California, Randy Cunningham, take over $2 million in bribes through war-profiteering using information he gathered on the House Intelligence Committee.

He sold this confidential information to the highest bidder, but this Congress won't even seize his 6-figure, taxpayer-financed annual pension.

America has seen the U.S. Congress put up for sale to the highest bidder by people like Jack Abramoff and Mike Scanlon.

But tonight, we are seeing something far worse and far more depraved, the complete politicization of our troops, serving in war time, to provide a boon to the oil and gas industry.

There is more shame to go around Congress now than indictments, and that is saying something today in Washington. The Republicans are holding funding for our military, funding for body armor, funding for security for military personnel hostage to keep the world safe for the profits of big energy.

And for that you pay $2.35 a gallon for gas!

Regardless of what one thinks of the war, we need to protect our sons and daughters fighting over there.

But again, this bill and this Administration falls short, using politics over policy; using political consultants over generals to fight a war.

Who loses? Our troops lose. Their families lose. America loses.

But this bill again reflects the warped priorities of the Bush Administration.

While I am angry about this process and this bill, I will reluctantly vote for it as our men and women in military need these funds immediately—even with these shameful additions.

I won't play the Republicans' game and hold our troops hostage, but I hope the Republicans in Congress and the White House who use our military as a political sound bite or tool to pass their own unrelated items recognize they represent the worst of America.

The blood of American men and women is on their hands for their politics of delay, diversion and division.

I yield back what shame is left in this corrupt institution.

CONFERENCE REPORT ON H.R. 2863, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

SPEECH OF

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 18, 2005

Mrs. MALONEY. Mr. Speaker, America's servicemen and servicewomen are the bravest, most valiant and skillful soldiers on earth and because of them, our military is the best in history. As the daughter and brother of war veterans, I am particularly supportive of our Nation's soldiers. The men and women serving America deserve the full support of our Nation. This is why it is particularly distasteful and dangerous when elected officials in Washington play politics with legislation that affects our troops serving right now in Iraq, Afghanistan and elsewhere.

It is tremendously disappointing that the leadership from the other side of the aisle has decided to play politics with this bill. They have taken a straightforward bill to fund our military, knowing that it is destined to pass, and hung politically controversial and unacceptable legislation to it. They have given us a withering Christmas tree.

This is politics at its distasteful worst, and it must be rejected. I am voting ''no'' on this bill because of the bad governance it represents and because of the bad policy attached at the last minute.

Opening part of the Arctic National Wildlife Refuge to oil drilling creates environmental harm in pursuit of a band-aid for our Nation's energy problems. Instead of putting adequate resources into developing alternative energy sources, which could solve our long-term problems, some in the Congress and the administration find it easier to go rushing into a treasured wildlife sanctuary for a short-term stopgap.

They were unable to get what they want through the normal legislative process. So, my colleagues on the other side of the aisle used a ploy—they attached their legislation to a defense bill, literally in the middle of the night.

As if that weren't bad enough, this bill has also been saddled with an irresponsible gift to drugmakers, shielding them from liability and giving victims only phantom protections. This is another proposal that did not go through the regular legislative process and could not have passed on its own merits.

Added on to all of that is a one percent across the board cut that will affect homeland security, education and health care programs. It will even chop $4 billion from the defense budget that supports our troops. Again, this did not go through the regular process and could not have passed on its own merits.

Though I cannot vote for this bill on principle, I am glad that it includes the restoration of $125 million for sick and injured 9/11 responders. The money was taken back from the responders at the president's request in the Labor-HHS appropriations bill we passed recently. My colleagues in the New York delegation and I worked hard to ensure that the 9/11 heroes can keep the assistance many of them so desperately still need. We were informed shortly before Thanksgiving that the Speaker would find a way to salvage the funds, and I thank him for following through with this action.

Despite the positive aspects of this bill, the other side of the aisle has attached—literally at the last minute—many unrelated items, which makes it impossible to support its passage. Such actions shouldn't be tolerated by this House. I wish to be associated with the comments of my friend and colleague, Mr. OBEY, who has spoken strongly in opposition to the process under which this final bill was created.

CONFERENCE REPORT ON S. 1932, DEFICIT REDUCTION ACT OF 2005

SPEECH OF

HON. CHRIS VAN HOLLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Sunday, December 18, 2005

Mr. VAN HOLLEN. Mr. Speaker, unfortunately for the American people, this reconciliation spending conference report arrives back in this Chamber substantially unimproved from its original form.

Notwithstanding modest revisions in areas like food stamps, low income heating assistance and physician reimbursement under Medicare, this package represents a warped vision for America: take from those with the least, give to those with the most and tell our children they will have to pay for it all later.

It would be a disgraceful document at any time of the year, but seems particularly Scrooge-like during this Holiday season.

Take Medicaid and the State Children's Health Insurance Program (SCHIP), which this conference report slashes by $6.9 billion. The cost-sharing and premium increases mandated by this legislation fall entirely on the